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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,402	10/29/2003	Jeffrey B. Hardesty	DP-309961 (444859-093)	7386
22851	7590	05/25/2005	EXAMINER	
DELPHI TECHNOLOGIES, INC. M/C 480-410-202 PO BOX 5052 TROY, MI 48007			YEE, DEBORAH	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,402

Applicant(s)

HARDESTY ET AL

Examiner

Deborah Yee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-11 and 14-27 is/are rejected.
- 7) ☒ Claim(s) 3-6, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-29-03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8 to 10 and 14 to 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Japanese patent 358174554 or Japanese patent 356105456 or Inoue et al. (US Patent 6,159,310).
4. The abstract of each patent discloses a method of attaching two components comprising the steps of providing a first and second component and placing filler metal between first and second component and welding the filler metal to form a weld between first and second component, wherein said weld comprises martensite. Even though prior art does not teach the martensite in the weld to sufficiently increase the volume of the weld thereby at least partially offsetting shrinkage of the weld upon cooling as recited by claim 8, such would be expected since process steps are met to produce a martensitic weldment.

5. Moreover the English abstract of JP'456 discloses more than 30% martensite in the weldment which is within the claimed ranges of 20 to 60% and 30 to 40% recited in claims 9 and 10, respectively. Inoue in Table 3 teaches a weldment having austenite-ferrite-martensite microstructure, and the English abstract of JP'554 discloses a massive martensite structure at weld zone.
6. Also similar to claims 11 to 27, prior art teaches first and second component comprising a stainless steel shaped in the form of tube or flange . JP'456 teaches welding components used for automotive exhaust system, and Inoue on lines 22 to 24 of column 2 welds using gas metal arc welding process. Also JP'456 discloses welding alloy 4 on page 289 containing C, Cr and Ni contents that meet claim 26.
7. Claims 1, 2,7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent 358174554, Japanese patent 56105456, Inoue (US Patent 6,159,310), Japanese patent 2000094182, or Bressanelli (US Patent 3,770,394).
8. The English abstract of each patent discloses a filler alloy having a composition with constituents whose wt% ranges overlap those recited by the claims; such overlap establishes a prima facie case of obviousness because it would be obvious to one of ordinary skill in the art to select the claimed alloy ranges from the broader disclosure of the prior art since the prior art has the same utility, see MPEP 2144.05. Moreover prior art teaches a martensitic weldment.
9. Also note prior art discloses specific examples which closely meet the claimed composition. See JP'554, alloy D in Table 1 on page 316; JP'182, alloy A12 in Table 1

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on page 5; JP'456, alloy 4 in column 9 on page 289; and Bressanelli, alloy 2 in Table II of columns 5 and 6.

Allowable Subject Matter

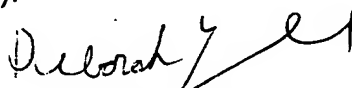
10. Claims 3 to 6, 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: The art of record does not teach filler alloy composition and its method of welding with said filler alloy, as claimed, to produce a martensitic weldment that is sufficient to overcome shrinkage of the weld during its cooling.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Yee whose telephone number is 571-272-1253. The examiner can normally be reached on Monday-Friday from 6:00 to 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deborah Yee
Primary Examiner
Art Unit 1742

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